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Reply to New York office

February 20, 2014

VIA ECF AND FEDERAL EXPRESS

Hon. Arthur D. Spatt
United States District Court
100 Federal Plaza
Central Islip, New York

**Re: Chiquita Fresh North America, LLC v. Long Island Banana Corp;
Case No. 14-cv-982**

Honorable Sir:

We are the attorneys for plaintiffs in the above-referenced matter which is scheduled to be before your Honor pursuant to an order to show cause entered by your Honor on February 14, 2014 (the "Order"; no copy of the Order has been placed on the docket). Pursuant to the Order, Plaintiffs were to effect service on defendants on or before February 21, 2014.

As your Honor may recall, the individual defendant in this case, Thomas J. Hoey, is currently being held by the United States Marshal Service ("USMS") in the New York MCC pending trial in an unrelated criminal proceeding. As a result, immediately following execution of the Order, I spoke with the USMS for the Southern and Eastern Districts of New York to determine if they were able to effectuate service on defendant Hoey. Although there was initially some uncertainty by the USMS concerning which district's Marshal Service would effectuate service, it was ultimately concluded that I would submit the papers to be served, together with the necessary paperwork and filing fee to the USMS for the Eastern District of New York. That office would forward the papers to the USMS for the Southern District of New York for delivery to defendant Hoey in his cell. The head of criminal division for the Southern District USMS told me it would be as simple as walking down to the cell and handing the papers to the defendant. I complied with the instructions I received from the USMS in all respects, even going so far as to email a copy of the papers to expedite service. Copies of relevant correspondence confirming these arrangements are annexed hereto.

Despite these arrangements, at 1:17 PM this afternoon, I received word from the USMS that they will not serve defendant Hoey. The explanation offered for the sudden reversal was that the USMS legal department advised the deputy handling the matter that the USMS for the Southern District does not serve papers in a civil matter. I was instructed to have the New York County Sheriff serve defendant Hoey. When I asked to speak with legal counsel, my request was denied.

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I then contacted the USMS for the Eastern District, advised them of the situation, and requested that they effectuate service. The representative I spoke with – the same person who I had previously coordinated service with – said that she did not understand why the Southern District USMS had changed its mind, and that she would see if she had any deputies available who could effect service in accordance with your Honor's order. Nevertheless, at 3:14 PM today, I was advised by the Eastern District USMS to "follow the instruction given by the Southern District of NY" [sic]. A copy of this email is included with the above-referenced correspondence.

Our office has attempted to reach the New York County Sheriff by telephone to request expedited handling of this matter. Unfortunately, none of the phone numbers we have for that office, or the address on its website, is answered. However, the Sheriff's web site plainly states that it requires three weeks' lead time for any service of process.

In light of the foregoing, it is respectfully requested that your Honor grant plaintiffs additional time in which to effect service on defendant Hoey. In addition, plaintiffs request that your Honor enter an order directing the USMS to effect service on defendant Hoey pursuant to Fed. R. Civ. P. 4(c)(3). Alternatively, plaintiffs request that your Honor enter an order authorizing plaintiffs to effect service by delivering a copy of the Order and related pleadings to defendant Hoey's legal counsel in the criminal proceeding pursuant to Fed. R. Civ. P. 5.

Defendant Long Island Banana Corp. has been served. Defendant Suffolk Banana Co., Inc. appears to have ceased operations. In addition, we understand that defendants are aware of the pendency of this action because they have spoken with at least one of the plaintiffs concerning the Order.

Thank you for your attention to this matter.

Respectfully yours,
McCarron & Diess

By:



Gregory Brown

Enclosures